

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

LAWRENCE BRANDON

§
§
§
§
§

VS.

CIVIL ACTION NO. 4:15cv297

MANUEL GONZALEZ

ORDER OF DISMISSAL

This civil action was referred to United States Magistrate Judge Don D. Bush, who issued a Report and Recommendation concluding that the complaint should be dismissed with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). Plaintiff filed objections.

In Plaintiff's objections, he first asserts that *Heck v. Humphrey* does not apply to his case because he is not contesting his conviction. 512 U.S. 477, 486-87, 114 S. Ct. 2364, 2372, 129 L. Ed.2d 383 (1994). However, as the United States Magistrate Judge noted, a finding that Plaintiff's counsel was ineffective in the instant civil rights case would necessarily imply the invalidity of his conviction. *Id.* Thus, *Heck* applies, and this objection is without merit.

In his second objection, Plaintiff reasserts allegations that his counsel¹ failed to provide competent representation and that he was denied a proper defense. The United States Magistrate Judge noted in his Report that claims of ineffective assistance of counsel are normally not cognizable in a § 1983 lawsuit because defense counsel is not a state actor. *Polk Cnty. v. Dodson*, 454 US. 312, 324-25, 102 S. Ct. 445, 453, 70 L. Ed.2d 509 (1981); *Hudson v. Hughes*,

¹Plaintiff states in his objections that the defendant in this case, defense counsel Manuel Gonzalez, did not represent him in the case concerning his conviction. While Plaintiff fails to clarify in which proceeding Gonzalez represented him, a section 1983 case, nonetheless, is not the appropriate avenue for such claims. Plaintiff's ineffective assistance of counsel claims might have been filed in a habeas petition filed pursuant to 28 U.S.C. § 2254. This court, however, declines to express an opinion as to the timeliness of such an action.

98 F.3d 868, 873 (5th Cir. 1996). Plaintiff concedes that defense counsel is not a state actor, and he fails to show that he may bring this action against Manuel Gonzalez. Plaintiff's objection is without merit.

In conclusion, the Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Plaintiff to the Report, the court concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the court. It is accordingly

ORDERED that the complaint is **DISMISSED** with prejudice. All motions by either party not previously ruled on are hereby **DENIED**.

So **ORDERED** and **SIGNED** this **14** day of **July, 2015**.



Ron Clark
Ron Clark, United States District Judge